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NORTH CAROLINA LAW REVIEW

---

Volume 32 | Number 2

Article 10

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2-1-1954

# Labor Law -- the Bargainability of Company Housing

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## Recommended Citation

Lacy H. Thornburg, *Labor Law -- the Bargainability of Company Housing*, 32 N.C. L. REV. 225 (1954).

Available at: <http://scholarship.law.unc.edu/nclr/vol32/iss2/10>

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within thirty days, no *capias* to issue,"<sup>34</sup> the court held that this was not a sentence of banishment.<sup>35</sup> But recently in *State v. Doughtie*,<sup>36</sup> the court said,

A sentence of banishment is undoubtedly void. A sentence suspended on condition that the defendant leave the State of North Carolina is in all practical effect a sentence of banishment. It gives the defendant no opportunity to avoid serving the road sentence except by exile.

This would seem to indicate a trend by the court away from sentences and conditions that by subtle interpretation result in banishment.<sup>37</sup> It certainly seems to recognize the fact that the place for the State's criminals is within the borders of the State. Otherwise, these unwilling expatriates would be foisted upon the no less unwilling citizens of other states and any duty to restrain or rehabilitate them would go unattended.

MYRON C. BANKS

### Labor Law—the Bargainability of Company Housing

Is company housing a subject of mandatory collective bargaining within the purview of the terms "wages" and "conditions of employment" as used in Section 9 (a) of the Labor-Management Relations Act?<sup>1</sup> In recent cases before the Courts of Appeals, a conflict has arisen, the Fourth Circuit holding that company housing is<sup>2</sup> and the Fifth Circuit that it is not<sup>3</sup> bargainable.

<sup>34</sup> *State v. Hatley et al.*, 110 N. C. 522, 14 S.E. 751 (1892). See also *Ex parte Hinson*, 156 N. C. 250, 252, 72 S.E. 310, 311 (1911), where defendant was told that if she left the county and did not return, she would not be imprisoned, and the clerk was directed not to issue *capias* for fifteen days, the court said, "The opportunity which withholding of the *capias* afforded defendant to escape was not a decree of banishment. There was nothing requiring her to leave. If she left, it was of her own free will and accord." Could this course be called strictly voluntary, when the only other course open to the defendant is a term in jail?

<sup>35</sup> *State v. Hatley et al.*, 110 N. C. 522, 14 S.E. 751 (1892).

<sup>36</sup> 237 N. C. 368, 74 S.E. 2d 923 (1953).

<sup>37</sup> Yet the court indicates that this decision does not bear directly on the decisions reached in *State v. Hatley*, 110 N. C. 522, 14 S.E. 751 (1892); *Ex parte Hinson*, 156 N. C. 250, 72 S.E. 310 (1911); and *State v. McAfee*, 189 N. C. 320, 127 S.E. 204 (1925):

For other reasons holding invalid a suspension of sentence on condition that the defendant leave a specified locale, see: *Ex parte Scarborough*, 73 Cal. App. 2d 648, 173 P. 2d 825 (1946) ("Unlawful increase of punishment not provided by statute"); *Ex parte Sheehan*, 100 Mont. 244, 49 P. 2d 438 (1935) ("In nature of a pardon on condition . . . the court sought to exercise a power which the Constitution reposes in the Governor and the board of pardons"); *State v. Doughtie*, *supra* note 36 ("It is not sound public policy").

<sup>1</sup> 29 U. S. C. § 159 (a) (Supp. 1952).

<sup>2</sup> *N. L. R. B. v. Portland Cement Co.*, 205 F. 2d 821 (4th Cir. 1953).

<sup>3</sup> *N. L. R. B. v. Bemis Bros. Bag Co.*, 206 F. 2d 33 (5th Cir. 1953). The Fifth Circuit did conclude, however, that the subject might be bargainable under proper circumstances.

Company housing is the outgrowth of the development of the factory system in New England. It dates back to the year 1791 when the growing concentration of job-producing machines and the immobility of the worker made it necessary to furnish housing facilities in order to secure an adequate working force. From this has grown the present company-owned village, which is most prevalent today in the mining, metallurgical, lumber, and textile industries. The percentage of employees using company houses varies from a low of fifteen percent in the copper and gold mining industries, to a high of near seventy percent in Southern textiles.<sup>4</sup>

The popularity of company housing, from the employers' viewpoint, stems from a need for certain types of emergency employees near the work location, a desire for a more stable labor supply, and a belief that a more efficient labor force is secured.<sup>5</sup> From the employees' viewpoint the reasons most frequently given are that it provides homes near the job, low rentals, and special favors such as decreasing, deferring, or cancelling the rental during sickness or shutdown.<sup>6</sup>

Presently there is a movement on the part of Southern textile manufacturers to rid themselves of company housing. This is being accomplished primarily through the sale of such houses to employees. By 1940, of over eight hundred textile concerns owning company houses in the Carolinas, Virginia, Georgia, and Alabama, approximately sixteen percent had sold either all or part of such holdings.<sup>7</sup> Advocates advance the following reasons for this movement: company housing is no longer needed in order to secure an adequate supply of trained labor; capital tied up may be freed for use in the enterprise itself; maintenance costs place the company at a competitive disadvantage; higher wages have made home ownership more practicable; workers not so housed complain of the unfairness of having to house their families elsewhere at a greater expense; industrial managers should not be burdened with real estate problems; paternalism of the mill village is no longer needed; and the houses have long since been written off the company books for tax purposes. Further, it is hoped that home ownership will make for more responsible citizens and better communities and lessen the workers' interest in union activities since a worker in the act of purchasing a home may hesitate to risk security for possible gains through union affiliation.<sup>8</sup>

<sup>4</sup> MAGNUSSON, *Housing by the Employers in the United States*, BUREAU OF LABOR STATISTICS BULL. No. 263 (1920). See also LAHNE, *THE COTTON MILL WORKER* (1944), where author concludes percentage in Southern textiles during early forties to be nearer 60%.

<sup>5</sup> MAGNUSSON, *supra* at 15.

<sup>6</sup> Regarding such practice in Southern textiles see LAHNE, *supra* at 39.

<sup>7</sup> HERRING, *PASSING OF THE MILL VILLAGE* 123 (1949).

<sup>8</sup> *Id.* at 126, 127. Houses have been sold almost exclusively to employees at prices well below fair market value, and payments extended over periods varying from five to twelve years.

Does the duty of the employer to bargain collectively as to "rates of pay, wages, hours of employment, or other conditions of employment" under Sections 8 (a) (5) and 9 (a) of the Taft-Hartley Act, extend to company housing?<sup>9</sup>

This question was first before the National Labor Relations Board under Section 8 (3) of the Wagner Act which provided, as does the present Taft-Hartley Act, that there should be no discrimination by the employer "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."<sup>10</sup> The question was presented in the *Great Western Mushroom Company* case<sup>11</sup> in 1940. The company furnished rent-free housing to its employees only during their employment tenure, and when threatened by union activity promptly sought from all employees an agreement not to strike, or in the alternative, to face eviction. The Board found this a discriminatory labor practice, and that the housing constituted a part of the employees' "wages."

The question was again before the Board the following year in the *Abbott Mills* case.<sup>12</sup> Company housing was furnished only to employees, and at a rental approximately one-third that of the surrounding area, and leases provided for immediate eviction in any except temporary lay offs. The Board, in ordering reinstatement in jobs and houses, held occupancy by the employees to be "in effect a part of their wages and . . . a term and condition of their employment . . ."<sup>13</sup>

In 1943,<sup>14</sup> the Board faced a situation in which the employer, who maintained company houses solely for the use of his employees during employment, discharged employees for union activities and after such discharge evicted them from their company houses. The Board found discrimination and required reinstatement of the employees in jobs and homes, and ruled that the "use and occupancy of such company owned houses" was "a right and privilege of their former employment."<sup>15</sup> These latter words have since been construed by the Board to mean "conditions of employment" within the purview of Section 9 (a) of the Taft-Hartley Act.<sup>16</sup>

Although the Taft-Hartley Act of 1947 made no changes in the text of the Wagner Act as to the subject matter of compulsory bargain-

<sup>9</sup> 29 U. S. C. A. 158 (a) (5) and 159 (a) (Supp. 1952).

<sup>10</sup> 49 STAT. 449, 29 U. S. C. § 158 (3) (1946) (N. L. R. A.); 29 U. S. C. A. § 158 (a) (3) (Supp. 1952) (L. M. R. A.).

<sup>11</sup> 27 N. L. R. B. 352 (1940).

<sup>12</sup> 36 N. L. R. B. 545 (1941) enforcement granted, 127 F. 2d 438 (1st Cir. 1942).

<sup>13</sup> *Id.* at 556.

<sup>14</sup> *Industrial Cotton Mills Co.*, 50 N. L. R. B. 855 (1943).

<sup>15</sup> *Id.* at 855.

<sup>16</sup> *Bemis Bros. Bag Co.*, 96 N. L. R. B. 728, 730, n. 4 (1951).

ing, the Board and the courts in the *Inland Steel*<sup>17</sup> (pensions) and *W. W. Cross*<sup>18</sup> cases, extended the scope of bargainable subjects by broad interpretations of the statutory terms "wages" and "conditions of employment."<sup>19</sup>

In the *West Bolston* case<sup>20</sup> of 1949 the Board for the first time clearly held company housing to be a subject of mandatory collective bargaining. In this instance the company promised to consult the union before deciding to evict any employees from their company-owned homes during an existant strike. The company, however, took affirmative action without consulting the union, and upon protest, the union was told the matter was not a subject of collective bargaining. The Board held this a refusal to bargain on the part of the employer.<sup>21</sup>

Soon thereafter, in the *Weherhaeuser Timber Co.* case,<sup>22</sup> the Board clarified its interpretation of the terms "wages" and "conditions of employment." The employer sought to raise meal prices in camp dining rooms where a substantial number of employees ate one or more meals per day. The distances to facilities in the nearest towns varied from five to twenty miles. The Board language used here has characterized later decisions concerning company housing.

The Board left no doubt that the term "conditions of employment" applies not only to conditions under which the employee is forced to work, but also to non-compulsory aspects of the employer-employee relationship. The fact that the disputed condition might be considered a convenience to the employee will not remove it from the scope of the Act; nor is it relevant in this respect that it meet a personal need. As to "wages," the scope of the term is not limited to remuneration received by employees for the actual performance of work or productive activity. It includes "emoluments resulting from employment in addition to or supplementary to actual rates of pay."<sup>23</sup> The Board in speaking of the availability of meals concludes that the "privilege itself" constitutes an emolument of value and may properly be considered a part of the employees' "wages."

The *Elgin Brick Company* case<sup>24</sup> of 1950 afforded a second clear holding by the Board that company housing must be considered a subject of mandatory collective bargaining. Here an employer refused

<sup>17</sup> *Inland Steel Co. v. N. L. R. B.*, 170 F. 2d 247 (7th Cir. 1948).

<sup>18</sup> *W. W. Cross and Company v. N. L. R. B.*, 174 F. 2d 875 (1st Cir. 1949).

<sup>19</sup> Note, 58 *YALE L. J.* 803 (1948-49).

<sup>20</sup> *West Bolston Manufacturing Co. of Alabama*, 87 N. L. R. B. 808 (1949).

<sup>21</sup> See *J. A. Bently Lumber Co.*, 83 N. L. R. B. 803 (1949) where employer maintaining quarters for logging crews was found guilty of violating Section 8 (a) (3) of the Act, by attempting to evict employees during strike. Board held occupancy of the houses to be a condition of employment.

<sup>22</sup> *Weyerhaeuser Timber Co.*, 87 N. L. R. B. 672 (1949).

<sup>23</sup> *Id.* at 675.

<sup>24</sup> *Elgin Standard Brick Mfg. Co.*, 90 N. L. R. B. 1467 (1950).

to bargain concerning oppressive lease provisions. The Board found this to be an unfair labor practice in as much as the privileged quarters constituted a part of the employees' wages and a condition of their employment.<sup>25</sup>

In the *Hart Cotton Mills* case,<sup>26</sup> of 1951, the Hart Cotton Mills, Inc., of Tarboro, North Carolina, maintained company houses for the exclusive use of its employees. The rental price was well below that for similar houses in the immediate area, housing was difficult to locate thereabouts, and it was admittedly necessary for the employer to furnish cheap housing in order to secure and maintain a full working crew. The employer was found guilty of an unfair labor practice as a result of his refusal to bargain at any time concerning the sale or rental of the company owned houses.<sup>27</sup> Upon petition for enforcement of the Board order, the Fourth Circuit reversed the Board on other grounds, company housing here being only a small part of a complicated labor problem. But in dealing with the housing phase of the problem presented, the court held that a refusal to bargain concerning company housing was in this instance an unfair labor practice. It emphatically stated that such houses are often a necessary part of the enterprise, and are maintained by the employer and rented at such rates as to represent a substantial part of the employees' wages. In conclusion it asserted the subject "to be one in which the employees have so great an interest in connection with their work that it should be a subject of collective bargaining."<sup>28</sup>

In 1953 the Fourth Circuit Court of Appeals once again considered the bargainability of company housing. The *Le High Portland Cement* case<sup>29</sup> involved an employer who maintained company houses for the exclusive use of his employees in an area where other housing was rarely available. The rent was below prevailing rates in the area, and had not been changed since the year 1937. On refusal of the employer to submit proposed rent increases to collective bargaining, the Board found an unfair labor practice,<sup>30</sup> and the court sustained its ruling. In clarification of its former decision, the court held it unnecessary that company houses be an "essential part of the enterprise or that their occupancy affect the workers pay." It determined a case to be suf-

<sup>25</sup> See *W. T. Carter and Bro.*, 190 N. L. R. B. 2020 (1950), and *Indianapolis Wire Bound Box Co.*, 89 N. L. R. B. 617 (1950), where Board held eviction from company houses to be in violation of Section 8 (a) (3), after it had determined occupancy of such houses to be a "term and condition of employment."

<sup>26</sup> *N. L. R. B. v. Hart Cotton Mills, Inc.*, 190 F. 2d 964 (4th Cir. 1951).

<sup>27</sup> *Hart Cotton Mills, Inc.*, 91 N. L. R. B. 728 (1950).

<sup>28</sup> *Id.* at 972.

<sup>29</sup> *N. L. R. B. v. Le High Portland Cement Co.*, 205 F. 2d 821 (4th Cir. 1953).

<sup>30</sup> *Le High Portland Cement Co.*, 101 N. L. R. B. 1010 (1952).

ficiently established by a showing that ownership and management of the houses materially affected the conditions of employment. Low rent plus living near the plant, concluded the court, gave occupants substantial advantages which affected their wages and conditions of employment.

These views were in harmony with those of the Board in the *Bemis Brothers Bag Company* case<sup>31</sup> of 1951 where refusal to bargain concerning rent increases for company houses was held to be a violation of Section 8 (a) (5). The houses were maintained strictly for employees. A statement in the lease provided that the premises were a part of the plant facilities of the lessor. Tenancy was on a week to week basis, and rent, water and light bills were often, though not always deducted from employees' pay checks. On termination of employment, houses were to be vacated. Housing was available in a nearby town, and public transportation afforded a speedy means of reaching the plant. Rentals were approximately the same as in the town. There was, however, a waiting list of eighty families seeking company homes.

On petition for enforcement of the Board order, however, the Fifth Circuit Court of Appeals in *N. L. R. B. v. Bemis Brothers Bag Company*,<sup>32</sup> held company housing, under the stated circumstances, to be outside the scope of mandatory collective bargaining. In reaching its conclusion, the Court emphasized a Board finding that only thirty-five percent of the employees in the bargaining unit were involved, and found that the language of the Act "clearly contemplates matters and things which arise out of, and may properly be considered a part of the employment relation,—the business in which the employer and employee participate as necessary and essential components in the furtherance of the enterprise."<sup>33</sup> The Court conceded, however, that if rent prices were so low as to constitute the savings on rent a part of the wage structure, or employees were forced by circumstance or by the employer to reside in company-owned houses, they could properly be held "wages" or "conditions of employment." It noted provisions of the lease which restricted and controlled occupancy of the homes, but concluded that lease provisions could not solely control the bargainability of company housing, otherwise they could be changed and the source of power destroyed by its exercise. To support a previously suggested criterion, the Court found company housing in this case to relate only incidentally to the business and the employment and held such a subject to concern only living conditions during off hours when an employee is free to pursue his personal life as he may prefer.

<sup>31</sup> *Bemis Bros. Bag Co.*, 96 N. L. R. B. 728 (1951).

<sup>32</sup> *N. L. R. B. v. Bemis Bros. Bag Co.*, 206 F. 2d 33 (5th Cir. 1953).

<sup>33</sup> *Id.* at 37.

Standards of living conditions, concluded the Court, affect a person's job efficiency, but do not make living expenses and means of residence conditions of employment. A contrary holding would mean all employees, whether in company houses or not would be able to bargain for living quarters.

Notwithstanding the factual differences between the *Bemis Bag* case and those that have gone before, it is submitted that the Fifth Circuit Court of Appeals reached the wrong decision. As to the fact that only thirty-five percent of the employees were involved, the court failed to realize that the duty to bargain collectively is for the protection of minority groups as well as the majority and that smallness of number affected is not a factor.<sup>34</sup> Nor does the fact that housing was available in a nearby town at rents comparable to those in the mill village justify the holding that the latter were not bargainable. The issue was a rent increase, amounting in effect to a wage cut for the tenants of company houses. Living in the town meant transportation costs. Eighty applicants stood ready to fill the next vacancy in a 300 unit mill village. In the light of the advantages to the employer, of company housing,<sup>35</sup> it does not seem improper to conclude that company houses are "necessary and essential components in the furtherance of the enterprise," as distinguished from a wholly personal, off-hour facility.

LACY H. THORNBURG

#### Pleading and Procedure—Counterclaims Exceeding the Jurisdictional Limit of the Court—Remedies

A potentially troublesome problem is illustrated by the following hypothetical case: Automobiles belonging respectively to *A* and *B* are involved in a collision. The automobile of *A* sustains damage in the amount of \$50.00 and the automobile of *B* in the amount of \$500.00. Before *B* can institute suit in the superior court to recover his damages, *A* sues *B* before a Justice of the Peace to recover damages in the amount of \$50.00.<sup>1</sup>

Does *B* have to seek recovery of damages sustained by his automobile by entering a counterclaim<sup>2</sup> to *A*'s cause of action at the risk of

<sup>34</sup> Weyerhaeuser Timber Co., 87 N. L. R. B. 672 (1949); *Steele v. Louisville and Nashville Railroad Co.*, 323 U. S. 192 (1944).

<sup>35</sup> Notes 4 and 5 *supra*.

<sup>1</sup> Justices of the Peace have concurrent jurisdiction with the superior court of civil actions in tort when the amount in controversy does not exceed fifty dollars. N. C. GEN. STAT. § 7-122 (1953).

<sup>2</sup> Counterclaim is used herein to mean a claim of the defendant in which an affirmative judgment against the plaintiff is prayed for. Generally the scope of this comment is limited to those counterclaims that exceed the plaintiff's claim. For distinctions and definitions in the area of counterclaims, recoupments and set-offs see: *McINTOSH, NORTH CAROLINA PRACTICE AND PROCEDURE IN CIVIL CASES* § 463 (1929).